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FEDERAL COMMUNICATIONS COMMISSION  
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JUN - 4 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of: )  
)  
Policies and Rules Pertaining to ) File No. CCB/CPD 97-19  
Local Exchange Carrier "Freezes" ) RM-9085  
on Consumer Choices of Primary )  
Local Exchange or Interexchange )  
Carriers )

SNET COMMENTS IN OPPOSITION TO MCI'S PETITION FOR RULEMAKING

The Southern New England Telephone Company (SNET) respectfully submits these Comments in opposition to the Petition for Rulemaking filed by MCI Telecommunications Corporation (MCI) on March 18, 1997.<sup>1</sup> In its Petition, MCI requests that the Federal Communications Commission (Commission) institute a rulemaking to regulate the solicitation, by any local exchange carrier (LEC) or its agent, of primary interexchange carrier (PIC) "freezes" or other carrier restrictions on a consumer's ability to switch its choice of interexchange and local exchange carrier.<sup>2</sup>

In these Comments, SNET argues that MCI's Petition is premature and should be dismissed. The Telecommunications Act of 1996,<sup>3</sup> which declared illegal the unauthorized change of a customer's long distance carrier (otherwise known as "slamming"), mandates that the Commission establish rules necessary

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<sup>1</sup> FCC Public Notice released May 5, 1997, established that comments are due on June 4, 1997, and Reply Comments are due to be filed on June 19, 1997, File No. CCB/CPD 97-19, RM-9085.

<sup>2</sup> SNET generally denies the allegations which MCI levels at SNET in its Petition. SNET will not respond to MCI's specific allegations in these Comments, due to litigation between the two companies currently pending in federal court. MCI Telecommunications Corporation v. The Southern New England Telecommunications Corporation, et. al., No. 3:97 CV 00810 (AHN), Complaint, dated April 29, 1997.

<sup>3</sup> Pub. L. No. 104-104, 110 Stat. 56 (codified at 47 U.S.C. §§ 151 *et. seq.*) (1996 Act).

consumers from this illegal practice. Thus, the Commission should dismiss MCI's Petition and instead, should consider the issue of PIC freezes as part of its overall consideration of slamming issues pursuant to the Act. SNET also argues that, in any event, the rules proposed in MCI's Petition are unnecessary and should not be adopted by the Commission.

## I. INTRODUCTION

Unauthorized PIC changes, known as "slamming," plague consumers throughout the country, including Connecticut. As of November 1996, slamming was the number one consumer complaint at the Commission's Common Carrier Bureau.<sup>4</sup> In 1994, the Commission logged 3,301 slamming complaints, up from 1,817 the previous year.<sup>5</sup> By July of 1995, monthly slamming complaints were up threefold from the previous year.<sup>6</sup> The year ended with the Commission logging more than 10,000 slamming complaints.<sup>7</sup> In addition, in Connecticut, the state's own Department of Public Utility Control was itself a victim of slamming in 1996!<sup>8</sup>

These figures make it clear that interexchange carriers (IXCs) have taken advantage of their deregulated freedom and, instead of competing fairly, many simply switch consumers' long distance carriers without their express approval.<sup>9</sup> In fact, on

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<sup>4</sup> Daniel, A Return to Written Consent: A Proposal to the FCC to Eliminate Slamming, 49 Fed. Com. L.J. 227, Nov. 1996, at 227.

<sup>5</sup> Corcoran & Mills, Long Distance: When the "Slam" Isn't So Grand, Washington Post, Mar. 4, 1995, at D1, D7.

<sup>6</sup> Naik, "Slamming" Scourge: Stealing of Customers Spread With Resellers of Telephone Service, Wall St. J., July 26, 1995, at A1.

<sup>7</sup> Gilgogg, It's Your Money, More Than Just a Contest: Stop a Slammer With a Freeze, Newsday, Apr. 28, 1996, at F3.

<sup>8</sup> Even DPUC Gets Snookered, CT Post, Dec. 17, 1996, at C1.

<sup>9</sup> Daniel, at 228-29.

January 23, 1996, the Commission proposed fines against AT&T and MCI for switching consumers to their service without their approval. Both AT&T and MCI have been accused of slamming since the early 1990s.<sup>10</sup>

A PIC freeze is a service offered by LECs which allows customers to place a freeze on their lines so that PIC changes cannot be processed without specific authorization directly from the customer. In 1990, SNET began offering PIC freezes to its customers as a means to protect their interstate long distance service.<sup>11</sup> Due to the significant increase in slamming complaints over the past several years, SNET has recently begun to actively market this offering in order to protect customers from these unauthorized PIC changes. It is important to note that Carrier Choice Protection is an optional service, and is available to customers of any IXC, not just SNET long distance customers. It is also important to note that, when SNET instituted its PIC freeze option in 1990, the intrastate market in Connecticut was not yet open to competition. SNET began offering Carrier Choice Protection simply because customers wanted the service in order to protect their interstate service against slamming.<sup>12</sup>

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<sup>10</sup> See Common Carrier Bureau Finds Five Companies Apparently Liable for Forfeiture for Slamming, Jan. 23, 1996, 1996 FCC Lexis 219; FCC Proposes Fining MCI and AT&T for "Slamming," Wall St. J., Jan. 24, 1996, at 8.

<sup>11</sup> SNET markets its PIC freeze service, known as Carrier Choice Protection, to its long distance customers. Carrier Choice Protection is optional and is not a condition of SNET All Distance service.

<sup>12</sup> Customers felt powerless against these unauthorized PIC changes. Increased demand grew for a service that would provide protection to the customer's choice of IXC. Today, customers still desire such protection, as evidenced by a recent letter to the editor of a Connecticut newspaper which expresses one customer's frustration at being slammed and praises SNET's PIC freeze option as a way to protect customer choice (see Attachment A).

II. PIC FREEZES SERVE AN IMPORTANT PUBLIC INTEREST BY PROTECTING CONSUMERS FROM UNAUTHORIZED PIC CHANGES.

The significant rise in the number of unauthorized PIC changes by IXCs over the past few years has created a need to protect consumers from this phenomenon of slamming. PIC freezes serve this need by prohibiting a carrier from changing a customer's long distance carrier without the express permission of the customer. PIC freezes, therefore, serve an important public interest. In fact, the Commission itself has identified PIC freezes as a method to prevent slamming and "encourage[s] entities such as LECs to take additional steps that might help reduce slamming in their service area."<sup>13</sup> In addition, the Connecticut Department of Public Utility Control has stated that it recommends that consumers utilize PIC freezes to ward off slamming, a practice about which the Department is very concerned.<sup>14</sup>

The Commission has also ruled that other similar PIC change verification procedures employed by LECs are important means of protecting customers from slamming. In RCI Long Distance, Inc. v. New York Telephone Co., et al.,<sup>15</sup> the Commission ruled that the PIC change procedures used by NYNEX and Bell Atlantic regarding payphones do not violate the Communications Act of 1934, as amended, or the Commission's PIC change rules or order. Specifically, in order to reduce the number of unauthorized PIC changes, NYNEX would not accept automated PIC changes for its payphones, and required IXCs to forward PIC changes via mail or fax for manual

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<sup>13</sup> Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, Report and Order, 10 FCC Rcd 9560, 9574 n. 58 (1995).

<sup>14</sup> See MCI Demands Probe of SNET Practice, New Haven Register, March 21, 1997, at D1, D5. In addition, the DPUC stated that although it is more difficult to switch carriers, once a PIC freeze is in place, "the protection from slamming is worth the inconvenience." Id. at D1.

<sup>15</sup> 11 FCC Rcd 8090 (July 11, 1996).

processing by NYNEX. In addition, NYNEX contacted payphone customers directly to confirm that a PIC change was in fact authorized.<sup>16</sup> Likewise, Bell Atlantic required IXC's to submit PIC change requests for payphones either by mail or fax (subject to telephonic confirmation between Bell Atlantic and the customer), or by initiating a three-way call among the customer, the IXC and Bell Atlantic, in order to obtain the customer's verbal confirmation.<sup>17</sup>

In the RCI case, the Commission held that the PIC change practices employed by NYNEX and Bell Atlantic were consistent with both the Act and the Commission's rules and were, in fact, necessary to protect customers against slamming. Further, the Commission noted that, contrary to RCI's allegations, the defendants had not improperly supplemented the Commission's PIC change verification procedures with additional requirements.<sup>18</sup> The Commission reasoned that its PIC change verification procedures "control the IXC's behavior during the telemarketing process (i.e., before the IXC submits its PIC change requests to the LEC). In contrast, defendants' internal processing procedures govern the relationship between IXC's and the LEC's after an IXC has had the opportunity to confirm the validity of a payphone subscriber's PIC change via one of the four verification options [prescribed by the Commission]."<sup>19</sup> Thus, the procedures employed by NYNEX and Bell Atlantic do not add to the Commission's rules governing

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<sup>16</sup> Id. at 8092.

<sup>17</sup> Id. at 8092-93.

<sup>18</sup> Id. at 8097.

<sup>19</sup> Id.

the IXC's relationship with its subscribers, but rather, the procedures serve to confirm that the IXC has actually complied with the Commission's rules in the first place.<sup>20</sup>

Furthermore, the Commission stated that NYNEX and Bell Atlantic have a "general obligation to protect their customers from fraud and other deceptive or misleading practices that could adversely affect their telephone service."<sup>21</sup> Indeed, SNET instituted its PIC freeze option in an effort to fulfill this obligation to its customers and provide them the means to protect their service from unauthorized PIC changes.

### III. PIC FREEZES DO NOT IMPEDE COMPETITION.

Contrary to MCI's assertions, PIC freezes do not impede competition. The PIC freeze does not deny customers the right to switch carriers. It simply prevents a carrier from slamming a customer in violation of the Commission's rules. Customers can still effect a PIC change if they so desire. They simply need to provide their LEC with express authorization to implement the change. Once this authorization is received, the LEC then changes the customer's PIC.

In fact, the experience in the Connecticut telecommunications market provides clear evidence that PIC freezes do not impede competition. For instance, SNET instituted PIC freezes *prior* to instate equal access. Now that the state is 100% converted to equal access and the market is wide open, the instate toll market is so competitive that the Connecticut Department of Public Utility Control has found the instate toll product to be

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<sup>20</sup> *Id.* at 8097-98.

<sup>21</sup> *Id.* at 8098.

fully competitive under Connecticut law.<sup>22</sup> Clearly, competition in Connecticut has flourished and has not, in any way, been impeded by SNET's PIC freeze option.

Furthermore, MCI's assertions that LECs misuse PIC freezes in order to refuse to implement customers' requests to change carriers is simply untrue. SNET has never refused to implement a PIC change once it has received express authorization from the customer to do so. MCI has not presented, and indeed can not present, any evidence to show that LECs abuse the PIC freeze in such a manner.

#### IV. SNET'S DIRECT MAIL SOLICITATION REGARDING CARRIER CHOICE PROTECTION IS NOT MISLEADING.

Contrary to MCI's allegations, SNET's direct mail solicitation regarding Carrier Choice Protection is not misleading. The solicitation clearly states that the customer's SNET long distance lines will not be switched unless the customer gives his *express written or verbal consent*. It is clear, therefore, that SNET's PIC freeze authorization fully apprises the customer of what action must be taken should the customer later decide to switch carriers.

#### V. THE RULES PROPOSED BY MCI IN ITS PETITION ARE UNNECESSARY.

The rules proposed by MCI in its Petition for Rulemaking are unnecessary, as Section 258 of the 1996 Act mandates that the Commission establish rules regarding slamming and related issues. Thus, MCI's Petition for Rulemaking is premature and

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<sup>22</sup> See decision dated November 27, 1996 in Docket No. 96-06-23, Application of SNET for Approval to Reclassify Message Toll Service from the Non-Competitive Category to Competitive.

should be dismissed. In any event, the rules proposed by MCI are unnecessary and should not be adopted by the Commission.

Specifically, the first rule proposed by MCI<sup>23</sup> clearly contravenes the intent of the Commission, as expressed in its Report and Order on Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers.<sup>24</sup> As mentioned previously, in that order the Commission identified PIC freezes as an important tool to prevent slamming. MCI's proposed rule would prohibit LECs from employing and soliciting PIC freezes. As described above, the PIC freeze is an important tool necessary to protect consumers against the increasingly prevalent phenomenon of slamming. In addition, PIC freezes do not impede competition and are, in fact, a response to a demonstrated customer need.

The second rule proposed by MCI, specifically proposed section 64.1200(b)(3), is also unacceptable. This rule would require carriers offering PIC freezes to furnish, upon request (and update electronically on a daily basis) to any carrier, the name and telephone number of *all* consumers who have PIC freezes on their accounts. This proposed rule clearly violates the privacy rights of customers and their expectation that such information, voluntarily given by customers to LECs in an effort to protect their long distance service, will not be furnished to other carriers. It is such privacy interests that are protected by the intent of the Act and should not, therefore, be violated in the context of PIC freeze requests. In addition, implementation of this rule would permit abuse of

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<sup>23</sup> Proposed section 64.1200(a).

<sup>24</sup> 10 FCC Rcd 9560, 9574 n. 58 (1995).



customer information for marketing or other purposes, in violation of the Commission's rules.

Finally, section 64.1200(b)(4) of MCI's proposed rules is completely unnecessary. This section would require that carriers offering PIC freezes "co-operate with other carriers and affected consumers" to remove an existing PIC freeze so that a new carrier can replace a current carrier as promptly as possible. This is exactly what SNET does today. As mentioned previously, once SNET receives a customer's express authorization to change carriers, SNET promptly removes the PIC freeze and implements the requested change. With regard to PIC changes and PIC freeze removals, SNET has fully cooperated with other carriers and with all affected consumers, and will continue to do so in the future.

## VI. CONCLUSION

PIC freezes serve to protect customers' carrier choice while allowing carriers to submit authorized changes to LECs. As described above, LECs' PIC freeze practices are reasonable, further the public interest, do not impede competition and do not violate the provisions of either the Communications Act of 1934, as amended, or the Telecommunications Act of 1996. The 1996 Act mandates that the Commission establish rules regarding slamming and related issues. Thus, MCI's Petition for Rulemaking should be dismissed and the Commission should consider the issue of PIC freezes as part of its overall consideration of slamming issues pursuant to the Act. In any event, the

rules proposed by MCI are unnecessary and should not be adopted by the Commission.

Respectfully submitted,

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## Phone company 'slamming' should be illegal

I have been a customer of Sprint since the company came into business, and have been very satisfied with their service. However, imagine my surprise upon opening my telephone bill to see that I had been "slammed" and switched to AT&T – not once, but twice.

I contacted the Public Utilities Commission and my congressmen, as well as both telephone companies. I was informed that the only way to stop slamming was to have

a "pick freeze" put on my service with SNET. Then no one could change me unless I was contacted first to request my permission.

Because of the slamming and the change of my carrier, I could have lost my Sprint priority points. Due to the circumstances, however, Sprint gave them back to me.

I believe that the customer should have the right to choose which ever telephone company he or she prefers. Slamming should

be against the law. It is a very wrong way to get business.

I commend SNET for having the "pick freeze" option. This does not mean you cannot choose your carrier; it says, rather, that once you pick your carrier, you cannot be arbitrarily changed without your permission.

I believe this is the American way: freedom of choice.

**Ann Lois Stoddard**  
Branford

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(Letter to Editor)